In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1567

JOHN H. JANSEN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted of forcibly assaulting, resisting, opposing, impeding, intimidating, and interfering with Internal Revenue Service agents in the performance of their duties, in violation of 18 U.S.C. 111. He was sentenced to one year's imprisonment and fined $3,000. The court of appeals affirmed (Pet. App. 1a-13a).

Petitioner contends that the prosecutor improperly questioned him about a prior misdemeanor conviction and that the trial judge improperly excluded evidence bearing upon intent. These issues were thoroughly explored and properly rejected by the court below, on whose opinion we primarily rely.

Petitioner contends that the trial court erroneously excluded evidence pertaining to his state of mind at

the time of the acts charged in the indictment. Petitioner apparently wished to show that his forcible and violent attacks on the Internal Revenue Service agents seizing his tavern proceeded from a sense of aggrieved injustice—that petitioner was at the time of the seizure seeking to raise funds with which to pay the tax and that he feared certain personal property (the "envelope;" Pet. 11) would be seized. But as the court of appeals properly held, proof of such a state of mind would not "constitute a defense * * * or negate the * * * intent forcibly to assault, resist, impede, etc." (Pet. App. 9a).

The cross-examination about petitioner's prior misdemeanor conviction was proper in this case because the defense had opened the door on direct examination by eliciting from petitioner a denial that he had ever been convicted of any "crime." Petitioner now suggests, apparently for the first time, that he was not represented by counsel at the time of his prior misdemeanor conviction and that he was foreclosed from testifying to that effect on re-direct examination. There is no support for these assertions in the record. But, in any event, the use of uncounseled prior convictions to rebut a witness's specific statement—in this case, petitioner's claim that he had never been convicted of a crime—is permissible. See *Loper* v. *Beto,* 405 U.S. 473, 482, n. 11.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JULY 1973.

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